



U.S. Citizenship  
and Immigration  
Services

LI



FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

AUG 25 2004

IN RE:

Applicant:



APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director  
Administrative Appeals Office

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prevent clearly unwarranted  
invasion of personal privacy

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**DISCUSSION:** The termination of the applicant's temporary resident status by the Director, California Service Center is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status because the applicant failed to file the application for adjustment of status from temporary to permanent residence within the 43-month application period.

On appeal, the applicant indicates that she had heart surgery in May 1992. She states that, prior to the time of the appeal, she had no advice and was not able to continue the process by herself.

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if the alien fails to file for adjustment of status from temporary to permanent resident on Form I-698 within forty-three months of the date he/she was granted status as a temporary resident under § 245a.1 of this part. 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on August 14, 1988. The 43-month eligibility period for filing for adjustment expired on March 14, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was filed on November 15, 1994. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

The applicant indicates that she had heart surgery on May 20, 1992. Although that date falls beyond the 43-month eligibility period, it is recognized that she no doubt was preoccupied if not somewhat incapacitated for some time prior to that. Nevertheless, the application process simply involved mailing an application, and she could have obtained assistance with that if necessary. Advice was available from the Immigration and Naturalization Service and voluntary organizations. The burden to file the adjustment application in a timely manner remains with the applicant. See 8 C.F.R. § 245a.3(d).

Citizenship and Immigration Services is not without sympathy for the applicant. Her statements made on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. As the applicant has not overcome the grounds for termination of status, the appeal must be dismissed.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.